

EXHIBIT 1

COOPERATION AND JOINT PROSECUTION AGREEMENT:

The following Cooperation and Joint Prosecution Agreement (this “Agreement”) is entered into between Class Counsel for the Consumer Plaintiffs (“Class Counsel”) in the case captioned *In re Google Play Consumer Antitrust Litigation*, No. 20-cv-05761-JD (N.D. Cal.) (the “Consumer Class Action”) and the Attorneys General of the States¹ (“Plaintiff States”) included in the case captioned *State of Utah et. al. v. Google LLC et. al.*, No. 21-cv-05227-JD (the “State AG Action”) (collectively “the Parties”). The State AG Action and Consumer Class Action are among those consolidated for trial purposes in *In re Google Play Store Antitrust Litigation*, No. 3:21-md-02981 (the “MDL,” and all above actions, collectively, the “Litigation”).

I. COLLABORATION AND JOINT PROSECUTION

Parties agree to jointly and cooperatively conduct the Litigation to the maximum extent feasible, consistent with the obligations of the Parties to their respective clients, including fact discovery and expert testimony, depositions, document review, pre-trial litigation, *in limine* motions, trial, settlement, and distribution of proceeds.

II. CLASS CERTIFICATION IN THE CIVIL PLAINTIFFS’ ACTION

In their operative complaint (the Consolidated First Amended Class Action Complaint, ECF No. 197), Class Counsel has brought claims (a) on behalf of a nationwide class of consumers under federal law; (b) on behalf of a nationwide class of consumers under California law; and (c) alternatively, under California law, on behalf of consumers that made purchases in those states that permit indirect purchaser standing—otherwise known as “repealer states.” In the absence of the Attorneys’ General *parens patriae* actions, Class Counsel would move to certify each of the foregoing classes pursuant to Federal Rule of Civil Procedure 23.

In their operative complaint (ECF No. 188), the Plaintiff States assert, among others, claims (a) on behalf of consumers in the Covered States under federal law in connection with their *parens patriae* authority; and (b) on behalf of consumers under specific state *parens patriae* authority (hereinafter “Covered Claims”).²

¹ Those States, commonwealths, and districts include Utah, New York, North Carolina, Tennessee, Arizona, Colorado, Iowa, Nebraska, Alaska, Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Idaho, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Texas, Virginia, Vermont, Washington, and West Virginia (collectively, the “Covered States”).

² “Covered Claims” as used in this agreement only includes claims brought pursuant to *parens patriae* authority. It does not include any other claims brought under the independent enforcement authority of the Attorneys General, such as for injunctive relief or penalties, to the extent provided for under state or federal law.

For Class Counsel and the Plaintiff States to jointly prosecute these actions in the best interests of consumers nationwide and in their respective states, and in reliance on the terms of this Agreement, the Parties hereby agree, as follows:

- Class Counsel will not make a procedural motion for class certification of a class or classes that includes consumers included in the Covered Claims;
- Class Counsel will move for class certification pursuant to Federal Rule of Civil Procedure 23 to pursue class claims under federal and/or state law on behalf of consumers in states where no Plaintiff State has asserted *parens patriae* claims (those class claims are “Non-Covered Claims”). The Attorneys General will not oppose Class Counsel seeking class certification over Non-Covered Claims;
- Notwithstanding the foregoing, the Parties will jointly pursue the Non-Covered and Covered Claims, and seek all monetary and non-monetary recoveries available to all such consumers including, specifically, any damages, money, restitution or any other relief for the benefit of and/or distribution or allocation to such consumers;
- No Plaintiff State will oppose class certification for consumers in any Covered State, as to which the Court rules, in the Litigation alone, that the respective Plaintiff State lacks *parens patriae* authority to pursue claims on behalf of its resident consumers;
- Class Counsel and the Plaintiff States intend for this agreement to continue, even if Covered Claims are amended to include additional states. If additional states join the State AG Action, it is the intention of the parties to have those states join in this Agreement, and Plaintiff States will use best efforts to accomplish this.; and
- Should any State dismiss its Covered Claims without prejudice, Class Counsel may, in their sole discretion, move to certify a class including claims from that state. In the event a class is certified, such claims shall be treated as Non-Covered Claims for purposes of this agreement. In the event Class Counsel do not move to certify a class including claims from that state, such claims will continue to be considered Covered Claims for purposes of this Agreement.
- To the extent the list of Covered Claims or Non-Covered Claims changes at any point in the litigation, the Parties to this agreement agree to meet and confer in good faith to establish the correct list of Covered Claims and Non-Covered Claims, respectively, provided, however, that any States that may join this litigation but do not become signatories to this Agreement shall be considered to assert Non-Covered Claims and will not be entitled to shared work product.

III. SETTLEMENT NEGOTIATIONS AND DISCUSSIONS

The Parties wish to coordinate their conduct to the maximum extent possible regarding settlement or resolution of consumers' claims. To that end, the Parties agree they will make best efforts to jointly engage in settlement activity, including formal and informal discussions, conferences, and mediations; they will be open and candid with each other about settlement goals and discussions; and they will work cooperatively and jointly file where reasonable any pleading, motion or other court filing necessary to effectuate preliminary and/or final resolution of settlement for the benefit of consumers' claims, nationally or otherwise. The Parties agree to inform each other of serious progress on potential settlement of either the Covered Claims or Non-Covered Claims as a whole.

The Parties expressly recognize that each of them owe duties to their own respective clients. Nothing in this agreement changes or otherwise alters the fact that Class Counsel owe a fiduciary duty to their clients and the class. Similarly, nothing contained herein is intended to alter or limit the prosecutorial or litigation discretion of the Plaintiff States' respective Attorneys General with respect to settlement.

The Parties understand that compromise of the Non-Covered Claims on a class-wide basis requires a hearing and court approval pursuant to Federal Rule of Civil Procedure 23, and that compromise of the Covered Claims requires a hearing and court approval under the Clayton Act, and that both Parties may be heard at both hearings.

IV. ATTORNEYS' FEES BY SETTLEMENT, JUDGMENT, OR VERDICT

In light of Class Counsel's and the Plaintiff States' agreement to jointly prosecute claims on behalf of their resident consumers and putative class members, respectively, and in acknowledgement of Class Counsel's significant contribution to date and their continued work to prosecute the claims they have asserted which has significant benefits for the Covered Claims and for residents of the Covered States, the Parties to this agreement set forth in advance how the Parties will seek attorneys' fees in the event of a settlement, judgment, or verdict with respect to Covered Claims and/or Non-Covered Claims.

- In addition to an application against any fund created by resolution of the Non-Covered Claims, Class Counsel may make an application to the Court for an award of attorneys' fees and reimbursement of litigation expenses from any recovery created by resolution of the Covered Claims, whether by settlement, verdict or judgment.
- Such application will be based on Ninth Circuit jurisprudence governing the award of attorneys' fees in common fund and class action litigation, which includes the possibility of a percentage-based fee award with a lodestar cross-check. Plaintiff States do not take the position that a pure lodestar-based fee award would be appropriate in this case.
- Class Counsel may make such application whether any class is or is not certified as to Non-Covered Claims, including for work following such order (provided such work is done while Class Counsel still represents clients with live claims in the case).

- The Parties will meet and confer with each other prior to submission of their respective applications.
- Class Counsel and the Plaintiff States agree that they will not collectively seek more in attorneys' fees against any recovery for Covered Claims than they would otherwise be entitled to under relevant Ninth Circuit authority for class action litigation. In other words, consumers in Covered States will not pay more in fees than they would have pursuant to a single common fund application under Ninth Circuit law.
- Accordingly, the attorneys' fees that Class Counsel and Plaintiff States shall seek in their respective fee applications shall be based on each respective group's overall contribution to recovery for Covered Claims. Assessment of each Party's contribution will be based on traditional factors such as attorney and staff time, monetary contribution to the litigation, the degree to which work product was shared, and other relevant indicia of contribution to the overall case.
- To the extent there is a settlement, judgment, or verdict with respect to the Non-Covered Claims, Class Counsel will seek an award of attorneys' fees and reimbursement of litigation expenses from the whole of any such settlement, judgment, or verdict, including any and all monetary recovery as well as the value of any non-monetary recovery. Plaintiff States disclaim any right to seek attorneys' fees against recoveries for Non-Covered Claims. However, Class Counsel's fee request against any fund created by the resolution of Covered Claims shall take into account (i.e., be offset by) the proportional contribution of the Plaintiff States, according to the principles articulated above, to any successful resolution of the Non-Covered Claims.

V. DISTRIBUTION OF SETTLEMENT, JUDGMENT, OR VERDICT PROCEEDS

To the extent permitted by law, the net proceeds of any fund or funds created by the resolution of Covered or Non-Covered Claims will be distributed to the respective consumers and class members. "Net proceeds" excludes any fees, expenses, service awards, notice costs, claims administration costs, taxes and tax preparation costs, and such other costs and expenses as may be approved by the Court. For the avoidance of doubt, with respect to the Covered States, "net proceeds" only includes funds recovered by resolution of the Covered Claims (*parens patriae* claims) on behalf of consumers. It does not include funds recovered through penalties, disgorgement, fines, or other such recoveries pursuant to powers vested in the Plaintiff States' Attorneys General solely in their capacity as law enforcement officials. In the event of a lump-sum settlement, the amount attributable to the Covered Claims will be determined by the Court at the fairness hearing required by the Clayton Act and some state laws.

Class Counsel and the Attorneys General shall work together to retain a notice provider and claims administrator to provide services related to providing notice to consumers and distributing any proceeds from a settlement, judgment, or verdict.

To the extent a dispute arises under this Agreement, the Parties will consider mediating the dispute.

This Agreement, or its substance, will be disclosed to the Court.


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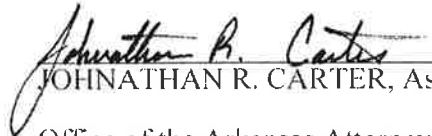
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Public Advocacy Division
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February 2, 2022

RE: Common Interest and Joint Prosecution Agreement

The following letter is to be considered an addendum to the Joint Prosecution Agreement (the “Agreement”) entered into between Class Counsel for the Consumer Plaintiffs (“Class Counsel”) in the case captioned *In re Google Play Consumer Antitrust Litigation*, No. 20-cv-05761-JD (N.D. Cal.) (the “Consumer Class Action”) and the Office of the Attorney General for the District of Columbia (the “District”) in the case captioned *State of Utah et. al. v. Google LLC et. al.*, No. 21-cv-05227-JD (the “State AG Action”) (collectively “the Parties”).^{*} The Parties seek to further clarify: (1) it is the Parties’ intent that the Agreement is to be considered and treated as a Common Interest Agreement and/or an extension of any Common Interest Agreement already signed by the Parties; (2) nothing in the Agreement would prevent DC from seeking fees based on the totality of DC’s work in this case.

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^{*} The State AG Action and Consumer Class Action are among those consolidated for trial purposes in *In re Google Play Store Antitrust Litigation*, No. 3:21-md-02981 (the “MDL,” and all above actions, collectively, the “Litigation”).

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The following is not intended to modify the Cooperation and Joint Prosecution Agreement (“CJPA”). For that reason, any ambiguity in the following provisions shall be interpreted so as to be consistent with, and not contrary to, the CJPA:

The Commonwealth of Kentucky expressly reserves the right to challenge any attorney fee application made by Class Counsel if the fee application is inconsistent with Ninth Circuit jurisprudence.

This reservation shall not be construed to negate the provision in Section IV of the CJPA that: “Plaintiff States do not take the position that a pure lodestar-based fee award would be appropriate in this case,” provided that the phrase “pure lodestar” in that sentence means a lodestar-based fee award with no multiplier at all.

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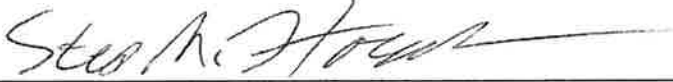
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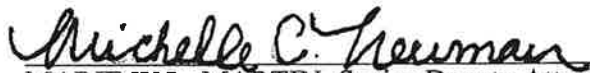
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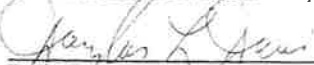
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